

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 897-2000
Telephone: (213) 897-2273
Facsimile: (213) 897-2263
E-Mail: Eric.Kohm@doj.ca.gov

May 4, 2011

Natalie Adomian, Deputy District Attorney
Los Angeles County District Attorney's Office
210 West Temple Street, 1st Floor
Los Angeles, CA 90012

RE: *People v. Daniel Thomas Larsen*; LASC PA032308
Daniel Larsen v. Derral G. Adams, Warden, United States District Court Case No.
CV08-04610 CAS (SS), United States Court of Appeals for the Ninth Circuit Case No.
10-56118
Order Granting Stay of Judgment

Dear Deputy District Attorney Adomian:

This letter is sent to advise you of the status of the above-referenced case because you prosecuted Mr. Larsen in 1999.

As I previously discussed with you, on June 14, 2010, the District Court conditionally granted Mr. Larsen's First Amended Petition for Writ of Habeas Corpus by ordering that he be released from custody if, within ninety days of the judgment becoming final, the state court had not elected to retry Mr. Larsen.

On July 6, 2010, the United States Court of Appeals for the Ninth Circuit issued its opinion in *Lee v. Lampert*, 610 F.3d 1125 (9th Cir. 2010), holding that there is no actual innocence exception to the Antiterrorism and Effective Death Penalty Act (AEDPA) one-year statute of limitations. This opinion conclusively overruled the District Court's ruling that Mr. Larsen presented sufficient evidence of actual innocence to warrant consideration of the merits of his untimely claim that his conviction was unconstitutional due to ineffective assistance of counsel. *See Larsen v. Adams*, 642 F. Supp. 2d 1124 (C.D. Cal. 2010).

As a result of the ruling in *Lee*, I informed you that I would be filing a notice of appeal on behalf of Respondent, which, in fact, I did on July 13, 2010.

On July 21, 2010, I filed an ex parte application for a stay of the judgment pending appeal in the District Court. On August 25, 2010, the District Court granted the application and stayed the judgment pending the appeal, as follows:

This Court's prior Judgment shall be STAYED until the earlier of either (1) final action being taken by the Ninth Circuit on Respondent's appeal in the instant matter or (2) the Ninth Circuit voting to rehear en banc the matter of *Lee v. Lampert*, __ F.3d __, 2010 WL 2652505 (9th Cir. 1010) [¶] In the event that the Ninth Circuit votes to rehear Lee en banc, the factor concerning "likelihood (sic) of success on appeal" will no longer weigh as heavily in Respondent's favor. Petitioner shall notify this Court within ten days of the grant of the petition for rehearing. Respondent shall have fourteen days from receipt of Petitioner's notice of rehearing in *Lee* to refile an application for stay, addressing the implications of the grant of en banc review.

On August 6, 2010, I filed a motion for summary reversal in the Ninth Circuit. On October 8, 2010, the Ninth Circuit denied the motion but held the appellate proceedings in abeyance pending resolution of *Lee*. Pursuant to the District Court's Order of August 25, 2010, the previously ordered stay expired on February 8, 2011, when the Ninth Circuit granted rehearing in *Lee*, but the District Court permitted the filing of an application to renew the stay.

On February 25, 2011, I filed an ex parte application to renew the stay pending the appeal to the Ninth Circuit, which the District Court denied on April 5, 2011. The District Court added:

The stay of the Court's prior Judgment shall be lifted in thirty (30) days from the date of this Order, unless the Ninth Circuit issues an order within that time continuing the stay of Petitioner's release. If the Ninth Circuit elects not to stay Petitioner's release, the action will be remanded for a new trial within ninety (90) days of the date the stay is lifted, plus any additional delay authorized under state law. If the State elects not to pursue a retrial, Petitioner shall be released from custody within ninety (90) days of the date the stay is lifted.

Thus, the stay was to be lifted on May 4, 2011, unless the Ninth Circuit ordered a stay of the Judgment pending the conclusion of the appeal.

On April 18, 2011, I filed an emergency stay motion in the Ninth Circuit. On May 3, 2011, the Ninth Circuit granted the motion and stayed the Judgment. Upon issuance of the mandate in *Lee*, Mr. Larsen may file a motion to lift the stay, if appropriate. The District Attorney's Office, therefore, is not required to comply with the District Court's judgment at this time.

Natalie Adomian
May 4, 2011
Page 3

I will continue to inform you of future developments. If there is any additional information you need from us, please do not hesitate to give us a call.

Sincerely,



ERIC J. KOHM
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

cc: Lynn Grant, Senior Staff Counsel
California Department of Corrections and Rehabilitation
P.O. Box 942883
1515 S Street, Room 319 South
Sacramento, CA 94283-0001

John Nantroup, Head Deputy District Attorney
Los Angeles County District Attorney's Office
210 West Temple Street, 1st Floor
Los Angeles, CA 90012

EJK:lz

LA2010502982
50898827.doc